



APPROVED
December 7, 2009

**APPROVED MINUTES
CITY OF SCOTTSDALE
CHARTER REVIEW TASK FORCE**

MONDAY, NOVEMBER 30, 2009

**CITY HALL KIVA
3939 NORTH DRINKWATER BOULEVARD
SCOTTSDALE, ARIZONA 85251**

PRESENT: Steven J. Twist, Chair
Susan Bitter Smith
Jim Derouin
Cindi Eberhardt
Alan Kaufman
Charlie Smith
Lisa Johnson Stone

STAFF: Carolyn Jagger, City Clerk
Sherry Scott, Deputy City Attorney
Brent Stockwell, Senior Advisor

Call to Order / Roll Call

Chairman Twist called the Charter Review Task Force regular meeting to order at 5:01 p.m. Roll call confirmed the presence of Task Force members as noted.

1. Approve Minutes from November 16, 2009

MOTION AND VOTE

JIM DEROUIN MOVED APPROVAL OF THE NOVEMBER 16, 2009 REGULAR MEETING MINUTES, AS AMENDED. CINDI EBERHARDT SECONDED. THE MOTION PASSED UNANIMOUSLY BY A VOTE OF SEVEN (7) TO ZERO (0).

2. Public Comment

John Washington stated he believes there would be advantages for citizens to be able to get to know candidates better in order to make an informed choice through districting. However, a simple change from at-large to districts is not the answer to all of the problems. If the City is going to entertain districts, it should be part of a larger discussion; in particular, increasing Mayor and Council salaries commensurate with their duties.

George Knowlton said the prior Task Force recommended that the Council allow the voters to decide on districting. He believes this Task Force should make that recommendation again so the people can have representation.

Bill Crawford said the primary responsibility for any government is representation of the people. District representation should be referred to the voters.

Patty Badenoch said districting can be very divisive. She takes issue with those who may have alternative motives for wanting districts in order to improve their chances of winning an election, which is not in concert with the greater cause of the unification of Scottsdale as a whole.

Sonnie Kirtley spoke in favor of remaining at-large, and asked for additional information regarding public input via the internet. The vote of the citizens in March 2004 should be honored, where there was a 61 percent rejection of the concept of districting.

3. Discussion and possible action regarding recommendations to the City Council regarding possible amendments to the Scottsdale City Charter

- a. Discuss possible recommendations for amendments to Article 11 relating to the City Court

Presiding Judge B. Monte Morgan addressed the Task Force, emphasizing the fundamental principle that the City Charter must align with the State Constitution. The court is not dependent solely upon the City, but is multi-dependant upon the Arizona Supreme Court and the Maricopa County Superior Court. Statutes, rules, and administrative orders direct how the court is to conduct itself in operations, accountability, and accessibility for court users. He explained the duties and responsibilities of the court.

Judge Morgan indicated the proposed language designates the court as a city court, a separate and distinct judicial branch of government that is part of the integrated Judicial Department of the State of Arizona, as provided by state law, and supported by Article 3, Section 1 of the Constitution.

In regard to the appointment of the City Judge, the language is revised to indicate that the initial term and the first reappointment term of the presiding judge shall be for two years; subsequent reappointments of the presiding judge shall be for terms of four years. Additional judges and pro tem judges may be appointed to the City Court in a manner provided by the ordinance. The City Council shall determine the compensation to be paid to all City judges, including the presiding judge, and may remove them for cause. This language recognizes the administrative supervision over the court in accordance with Article 6, Section 3 of the Arizona Constitution and Administrative Order 2005-32 of the Arizona Supreme Court.

Recommendations for Section 3 were presented as follows:

“The Council shall pass all necessary ordinances and funding to give effect to the provisions of this Article not otherwise herein provided. The presiding judge shall propose and administer the court’s budget consistent with the City budget and finance ordinances and policies.”

This language implements the provisions of the prior two sections by assuring appropriate funding to enable the court to perform its judicial duties with the degree of separation and autonomy required by the Constitution to assure impartiality and to promote public confidence in the court. The court currently collects in excess of \$4 million over its expenditures; therefore, funding should not be an issue.

Judge Morgan strongly urged the Task Force to recommend ratifying the language.

Chairman Twist expressed concern regarding the proposed language making continuing reference to making the court a part of the integrated judicial branch of the State of Arizona. In addition, the language obligating the City Council to provide all necessary funding could create an uncertain mandate.

Judge Morgan reiterated that State law and the Constitution are not at all ambiguous regarding city courts being a part of the State's Judicial Department. The order of the Supreme Court clearly integrates city courts into the judicial system and not into the City. He explained the Charter should mandate court funding, and the City is clearly enumerated for hosting the City court.

Chairman Twist discussed the dividing line between the administrative authority of the Supreme Court over the City Court, and the City Council's authority.

Alan Kaufman and Charlie Smith discussed their concerns regarding the proposed changes. Brent Stockwell noted that the City of Phoenix Charter is the only Arizona charter has language that covers topics similar to the proposed language.

Susan Bitter Smith discussed her concerns with the proposed language for Section 2, indicating she believes that is already addressed by the City Ordinance.

MOTION

SUSAN BITTER SMITH MOVED THAT THE TASK FORCE RECOMMEND TO THE COUNCIL THAT ARTICLE 11, SECTION 1 BE AMENDED TO ADD "AS A SEPARATE JUDICIAL BRANCH OF CITY GOVERNMENT." ALAN KAUFMAN SECONDED.

The Task Force discussed the issue of the court being a part of the integrated Judicial Department of the State.

VOTE

THE MOTION TO RECOMMEND TO THE COUNCIL THAT ARTICLE 11, SECTION 1 BE AMENDED TO ADD "AS A SEPARATE JUDICIAL BRANCH OF CITY GOVERNMENT" PASSED BY A VOTE OF FIVE (5) TO TWO (2), WITH CHARLIE SMITH AND CINDI EBERHARDT DISSENTING.

MOTION

SUSAN BITTER SMITH MOVED THAT THE TASK FORCE RECOMMEND TO THE COUNCIL THAT ARTICLE 11, SECTION 3 BE AMENDED TO ADD, "THE PRESIDING JUDGE SHALL PROPOSE AND ADMINISTER THE COURT'S BUDGET CONSISTENT WITH CITY BUDGET AND FINANCE ORDINANCES AND POLICIES." LISA JOHNSON STONE SECONDED.

The Task Force discussed the proposed language regarding court funding.

VOTE

THE MOTION THAT THE TASK FORCE RECOMMEND TO THE COUNCIL THAT ARTICLE 11, SECTION 3 BE AMENDED TO ADD, "THE PRESIDING JUDGE SHALL PROPOSE AND ADMINISTER THE COURT'S BUDGET CONSISTENT WITH CITY BUDGET AND FINANCE ORDINANCES AND POLICIES" PASSED BY A VOTE OF SIX (6) TO ONE (1), WITH CHARLIE SMITH DISSENTING.

The Task Force discussed the proposed language for Article 11, Section 2. Alan Kaufman asked Sherry Scott whether there was authority in the City to make appointments, if the last two sentences were not added to the Charter. Ms. Scott explained the City does have the authority to appoint associate judges; however, the Task Force should decide whether this is a power that should be written into the Charter. She indicated she does see a benefit in putting it in the Charter.

MOTION AND VOTE

JIM DEROUIN MOVED THAT THE TASK FORCE RECOMMEND TO THE COUNCIL THAT ARTICLE 11, SECTION 2 BE AMENDED AS DISCUSSED BY STRIKING THE WORD "OFFICER" AND REPLACING IT WITH THE WORD "JUDGE," ADDING THE PHRASE "SHALL EXERCISE ADMINISTRATIVE SUPERVISION OVER THE CITY COURT," STRIKING "AND SHALL SERVE FOR A PERIOD OF TWO (2) YEARS. HE SHALL RECEIVE SUCH COMPENSATION AS PROVIDED BY THE CITY COUNCIL AND MAY BE REMOVED BY THEM FOR CAUSE. THE CITY COUNCIL MAY APPOINT JUDGES PRO TEMPORE AS DEEMED NECESSARY." AND ADDING "THE INITIAL TERM OF A PRESIDING JUDGE SHALL BE FOR TWO (2) YEARS. SUBSEQUENT REAPPOINTMENTS OF THE PRESIDING JUDGE SHALL BE FOR TERMS TO BE DETERMINED BY ORDINANCE, BUT IN ANY EVENT FOR NOT LESS THAN TWO YEARS. ADDITIONAL CITY JUDGES AND JUDGES PRO TEMPORE MAY BE APPOINTED TO THE CITY COURT IN A MANNER PROVIDED BY ORDINANCE. THE CITY COUNCIL SHALL DETERMINE THE COMPENSATION TO BE PAID TO ALL CITY JUDGES, INCLUDING THE PRESIDING JUDGE, AND MAY REMOVE THEM FOR CAUSE." CHARLIE SMITH SECONDED. THE MOTION PASSED UNANIMOUSLY BY A VOTE OF SEVEN (7) TO ZERO (0).

- b. Discuss possible recommendations for amendments to Article 2, Sections 2, 3, 4, and 11 and Article 9, Section 5 regarding changing the method of selection of council members from at large to district

Susan Bitter Smith said there have been three or four emails from the public regarding this subject. Those emails read almost identically and were in opposition to districts. There are two very distinct sets of opinions in the City. While the Charter presents an opportunity to have this discussion, both proponents and opponents agree it deserves more attention. There are related issues to districts that are also charter issues. She indicated it is useful for the Task Force to have this discussion, and that she believes the City would be better served by having districts. Noting the importance and sensitivity of this issue, she suggested that all issues related to elections be a separate discussion by a citizen committee.

Brent Stockwell said since October 5, the Task Force has received one comment in favor of districts and eight comments asking for no districts. Two citizens commented about the process.

Dr. Jim Svava made a presentation on the subject of districts, explaining that they are structural devices in elections that often accompany the increased size of cities. Eighty percent of cities with a population over 200,000 use districts. The size of the population as well as the geographical size of the jurisdiction are two factors that lead some to argue that it is hard for council members elected at-large to be fully aware of and fairly representing all parts of the city. Dr. Svava discussed the pros and cons of at-large and district elections. He indicated there is an alternative approach that involves a combination of both types of seats, including the 5-2-1 method.

In response to an inquiry by Chairman Twist regarding the negative effects of districting on council members, Dr. Svava replied no systematic research has been done in this regard. He indicated surveys have suggested that all council members have become very focused on constituency relations over the past ten years, regardless of whether they were elected at-large or by district.

The Task Force discussed recommending to the City Council that a citizen body be appointed to research and discuss election issues, including districts and council member salaries.

Susan Bitter Smith suggested wording for a motion, and the Task Force discussed changes to the proposed motion.

MOTION

SUSAN BITTER SMITH MOVED THAT THE TASK FORCE SUGGEST THAT THE CITY COUNCIL CONSIDER WHETHER CHANGED CIRCUMSTANCES WARRANT ESTABLISHING A CITIZEN COMMITTEE TO REVIEW THE ISSUES OF DISTRICTS AND RELATED ISSUES WHICH COULD INCLUDE COUNCIL SALARIES, BOARD AND COMMISSION APPOINTMENTS, AND SIMILAR ISSUES. ALAN KAUFMAN SECONDED.

Bill Crawford discussed the differences in demographics in the City, and how it affects elections. Sonnie Kirtley expressed concern that too many extraneous issues were being combined with the district discussion.

VOTE

THE MOTION THAT THE TASK FORCE SUGGEST THAT THE CITY COUNCIL CONSIDER WHETHER CHANGED CIRCUMSTANCES WARRANT ESTABLISHING A CITIZEN COMMITTEE TO REVIEW THE ISSUES OF DISTRICTS AND RELATED ISSUES WHICH COULD INCLUDE COUNCIL SALARIES, BOARD AND COMMISSION APPOINTMENTS, AND SIMILAR ISSUES PASSED BY A VOTE OF SIX (6) TO ONE (1), WITH CHARLIE SMITH DISSENTING.

Chairman Twist said he believes the passage of the motion would send a message to the Council that the Task Force believes the issue of amending the Charter for the purpose of districts is beyond the scope of its duties.

Charlie Smith explained that the intent of his vote is to establish his opposition to districts in any form.

- c. Discuss items continued from November 16, including possible recommendations for amendments in Article 2 relating to the duties of the Mayor, and Article 3 relating to public hearings prior to termination for officers of the City

Brent Stockwell said the concept was not to add any additional powers to the office of the Mayor, but to reflect what the current and previous mayors have routinely been responsible for. He discussed changes made to the language as a consequence of the Task Force's discussions on November 16.

Ms. Scott explained that the language was changed in order to assure that there is some individual analysis of what the Council may be appointing the Mayor to do.

Mr. Stockwell said the key question for the Task Force's consideration is whether or not it wants to include these duties in the Charter or leave them to Ordinance.

Susan Bitter Smith asked for clarification regarding why these changes are needed. Mr. Stockwell said the original charge of the Task Force is to remove obsolete provisions, clarify items, and make other changes to promote citizen-friendly government. In addition, the Charter had its origins in 1941 but evolved over time. As things have evolved, one of the significant differences from the original charter is that it recognizes an evolving policy leadership role of the Mayor. This addition would clarify that the Mayor is serving in an expanded role.

Charlie Smith inquired whether staff is suggesting that the Mayor can make appointments and assignments that are not approved by the City Council, and Mr. Stockwell responded that the language would clarify that Mayoral appointments and assignments would be subject to the approval of the City Council.

MOTION AND VOTE

CHARLIE SMITH MOVED THAT THE TASK FORCE RECOMMEND THAT ARTICLE 2, SECTION 6 BE AMENDED AS PRESENTED TO STRIKE "THE CHAIRMAN OF THE COUNCIL AND PRESIDE OVER ITS MEETINGS. HE MAY MAKE AND SECOND MOTIONS AND SHALL HAVE A VOICE AND VOTE IN ALL ITS PROCEEDINGS" AND ADD "A VOTING MEMBER OF THE COUNCIL AND SHALL ATTEND AND PRESIDE AT MEETINGS OF THE COUNCIL; REPRESENT AND APPOINT MEMBERS OF THE COUNCIL TO REPRESENT THE COUNCIL IN INTERGOVERNMENTAL RELATIONSHIPS; PRESENT AN ANNUAL STATE OF THE CITY MESSAGE; APPOINT THE MEMBERS OF COUNCIL COMMITTEES; ASSIGN AGENDA ITEMS TO COMMITTEES; AND PERFORM OTHER DUTIES SPECIFIED BY THE COUNCIL AND ALLOWED BY LAW. ALL APPOINTMENTS AND ASSIGNMENTS MADE BY THE MAYOR SHALL BE SUBJECT TO THE APPROVAL OF THE COUNCIL." CINDI EBERHARDT SECONDED. THE MOTION PASSED UNANIMOUSLY BY A VOTE OF SEVEN (7) TO ZERO (0).

Chairman Twist discussed amendments to Article 2, Section 17, which is related to the Mayor and Council staff. He asked that the item be put on the next agenda for discussion. In regard to Article 3, Section 1, there was discussion dealing with the issue of the qualifications of City officers and how they can be removed. The current Charter only extends to the City Manager, and the proposed changes would apply the Charter to all City officers.

The Task Force discussed removal procedures of City officers who serve at the pleasure of the City Council, and whether those individuals have a right to a public hearing upon their removal.

Chairman Twist asked Sherry Smith to discuss the legal interpretation of the language. Ms. Smith said it would be nice to clarify that language, since it could be interpreted to mean that the officer would be entitled to a public hearing.

MOTION AND VOTE

ALAN KAUFMAN MOVED TO STRIKE THE FOLLOWING LANGUAGE IN ARTICLE 3, SECTION 1, THAT WAS APPROVED AT THE LAST MEETING, "ANY OFFICER OF THE CITY MAY WITHIN TEN (10) DAYS FROM THE DATE OF A VOTE OF REMOVAL, REQUEST A PUBLIC HEARING TO BE HELD NOT LATER THAN THIRTY (30) DAYS THEREAFTER." JIM DEROUIN SECONDED. THE MOTION FAILED BY A VOTE OF ONE (1) TO SIX (6), WITH CHAIRMAN TWIST, JIM DEROUIN, CINDI EBERHARDT, CHARLIE SMITH, SUSAN BITTER SMITH, AND LISA JOHNSON STONE DISSENTING.

- d. Discuss possible recommendations for amendments to Article 6 relating to Finance and Taxation

THIS ITEM WAS CONTINUED UNTIL THE DECEMBER 7, 2009 MEETING.

- e. Discuss possible recommendations for amendments to Article 7 relating to Ordinances and Resolutions

THIS ITEM WAS CONTINUED UNTIL THE DECEMBER 7, 2009 MEETING.

- f. Discuss possible recommendations for amendments to Article 8 relating to Contracts

THIS ITEM WAS CONTINUED UNTIL THE DECEMBER 7, 2009 MEETING.

4. Review, discuss, and possibly amend draft agenda for December 7, 2009 meeting

The Task Force agreed that topics at the next meeting would include Article 2, Section 17 relating to Mayor and Council staff, and Articles 6 through 8.

Adjournment

With no further business to discuss, the meeting adjourned at 7:12 p.m.

Respectfully submitted,

REVIEWED BY:

A/V Tronics, Inc. DBA AVTranz

Brent Stockwell,
Senior Advisor

Officially approved by the Charter Review Task Force on Monday, December 7, 2009.